

KLESTADT WINTERS JURELLER

SOUTHARD & STEVENS, LLP

200 West 41st Street, 17th Floor

New York, NY 10036-7203

Telephone: (212) 972-3000

Facsimile: (212) 972-2245

Fred Stevens

Lauren C. Kiss

*Special Litigation Counsel to Yann Geron,
Chapter 7 Trustee of the Estate of Nanobeak
Biotech Inc.*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
In re	:
	:
NANOBEAK BIOTECH INC.,	:
	:
Debtor.	:
-----X	
NANOBEAK BIOTECH INC.,	:
	:
Plaintiff,	:
	:
-against-	:
	:
JAMES JEREMY BARBERA,	:
	:
Defendant.	:
-----X	

Chapter 7
Case No. 21-11600 (MG)
Adv. Pro. No. 21-1217

NOTICE OF FILING OF SECOND STATUS REPORT

PLEASE TAKE NOTICE that the Chapter 7 Trustee (the “Trustee”) for the estate of Nanobeak Biotech Inc. (the “Debtor”), by and through his special litigation counsel, Klestadt Winters Jureller Southard & Stevens, LLP, hereby files a second report (the “Second Status Report”) detailing the status of the criminal action, entitled *United States of America v. James Jeremy Barbera*, Case No. 21-CR-00154 (JGK) and its implications on the above-captioned

adversary proceeding, which Second Status Report is attached hereto as Exhibit A.¹

Dated: New York, New York
January 9, 2023

**KLESTADT WINTERS JURELLER
SOUTHARD & STEVENS, LLP**

By: /s/ Lauren C. Kiss

Fred Stevens
Lauren C. Kiss
200 West 41st Street, 17th Floor
New York, New York 10036-7203
Tel: (212) 972-3000
Fax: (212) 972-2245
Email: fstevens@klestadt.com
lkiss@klestadt.com

*Special Litigation Counsel to Yann Geron, the
Chapter 7 Trustee of the Estate of
Nanobeak Biotech Inc.*

¹ The first status report filed by the Trustee was filed at Docket No. 8 on May 6, 2022 in the above-captioned adversary proceeding.

Exhibit A

I. Status of Criminal Action captioned *United States of America v. James Jeremy Barbera*, Case No. 21-CR-00154 (JGK) (as of January 9, 2023)

1. On December 8, 2020, the United States of America (the “Government”) filed a complaint (the “Criminal Complaint”) against James Jeremy Barbera (“Barbera”) in the United States District Court for the Southern District of New York (the “District Court”) on account of Barbera’s alleged participation in a scheme to defraud dozens of the Debtor’s investors out of approximately \$12.2 million (the “Criminal Action”). *See United States of America v. James Jeremy Barbera*, Case No. 21-CR-00154 (JGK) (S.D.N.Y. Dec. 8, 2020). In the Criminal Complaint, the Government charged Barbera with the following counts: (i) conspiracy to commit securities fraud and wire fraud, in violation of 18 U.S.C. § 371; (ii) securities fraud, in violation of 15 U.S.C. §§ 75j(b) and 78ff, and 17 C.F.R. § 240.10b-5; and (iii) wire fraud, in violation of 18 U.S.C. § 1343.

2. On December 9, 2020, Barbera was arrested pursuant to the Criminal Complaint.

3. On March 8, 2021, a grand jury handed down Indictment 21 Cr. 154 (the “Indictment”), charging Barbera with the same three (3) counts in the Criminal Complaint. *See Criminal Action*, Indictment at Docket No. 10.

4. On March 10, 2021, Barbera pleaded not guilty to the charges against him in the Indictment.

5. Trial in the Criminal Action commenced on February 7, 2022. On February 17, 2022, the jury in the Criminal Action returned a guilty verdict on all three counts. Barbera’s sentencing was originally scheduled for June 16, 2022.

6. On April 11, 2022, Barbera filed a motion seeking entry of an order granting him a new trial pursuant to Rule 33 of the Federal Rules of Civil Procedure (the “Motion for a New”).

Trial”).

7. On August 5, 2022, the District Court entered a memorandum opinion and order denying Barbera’s Motion for a New Trial.

8. On October 18, 2022, the District Court entered an order scheduling Barbera’s sentencing hearing for November 21, 2022.

9. On November 17, 2022, the District Court issued an order that it would not be proceeding with sentencing on November 21, 2022 because the parties’ submissions were insufficient to resolve basic issues necessary for sentencing. As a result, the District Court directed Barbera and the Government to submit additional sentencing briefs.

10. The supplemental briefs have been filed and the District Court is expected to schedule a sentencing hearing after review of the supplemental briefs.

II. Status of Adversary Proceeding captioned *Nanobeak Biotech Inc. v. James Jeremy Barbera*, Adv. Pro. No. 21-1217 (as of January 9, 2023)

11. On August 31, 2020, the Debtor commenced litigation against Barbera in the District Court asserting the following causes of action against Barbera: (i) violation of the United States Computer Fraud and Abuse Act, 18 U.S.C. §§ 1030(a)(2)(C), 1030(g); (ii) breach of fiduciary duty; (iii) fraud; (iv) conversion; and (v) accounting and imposition of a constructive trust (the “Federal Court Action”). *See Nanobeak Biotech Inc. v. James Jeremy Barbera*, Case No. 20-CV-7080 (LLS) (S.D.N.Y. Aug. 31, 2020). By order dated April 13, 2021, the District Court dismissed the federal claim for violation of the United States Computer Fraud and Abuse Act and declined to exercise supplemental jurisdiction over the remaining state law claims asserted in the Federal Court Action pursuant to 28 U.S.C. § 1367(c)(3). *See Federal Court Action, Opinion & Order* at Docket No. 15.

12. On April 20, 2021, the Debtor commenced an action against Barbera in the

Supreme Court of the State of New York, County of New York (the “State Court”) asserting the same four (4) state law causes of action asserted in the Federal Court Action (the “State Court Action”). *See Nanobeak Biotech Inc. v. James Jeremy Barbera*, Index No. 652646/2021 (N.Y. State Supreme Court, Apr. 20, 2021).

13. On or around September 15, 2021, the Trustee, on behalf of the Debtor’s estate, the Debtor and Barbera entered into a stipulation and proposed order staying the State Court Action pursuant to Rule 2201 of the New York Civil Practice Law and Rules until such time as (i) the Criminal Action has concluded or (ii) the State Court determines that continuing the stay is no longer proper (the “Stay Stipulation”). *See* State Court Action, Proposed Stipulation at Docket No. 19.

14. On December 9, 2021, the Trustee filed a notice of removal with the District Court to remove the State Court Action to the District Court pursuant to 28 U.S.C. §§ 1334 and 1452 and Bankruptcy Rule 9027. On December 13, 2021, the District Court referred the State Court Action to the Bankruptcy Court in accordance with the “Amended Standing Order of Reference” and the State Court Action was assigned Adv. Pro. No. 21-1217 (MG) (the “Adversary Proceeding”).

15. It is the Trustee’s position that because the Criminal Action has not concluded the Adversary Proceeding is still stayed.